

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8164 of 2005

Between:

Mr.Karanam Mohan Rao, s/o late Sri K.Achaiah Naidu,
c/o Achaiah Enterprises, Archies Gallery, D.No.10-1-8/2, Waltair Uplands,
Visakhapatnam-3.

... PETITIONER

AND

1 Visakhapatnam Municipal Corporation, Assilemetta Junction, Visakhapatnam
rep., by its Commissioner.

2 Mr.Rajender Kumar Jain, s/o G.C.Jain, r/o 10-1-8/2, Waltair Uplands,
Visakhapatnam-3.

3 Smt.Gulab Devi Hirawat, w/o G.C.Jain, r/o 10-1-8/2, Waltair Uplands,
Visakhapatnam-3.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order, direction more particularly a writ of mandamus, declaring the proposed action of the first respondent to demolish the shop premises bearing No.10-1-8/2, Waltair Uplands, Visakhapatnam taken on lease by the petitioner without serving a notice upon the petitioner as arbitrary, illegal, and contrary to the principles of equity and natural justice and also against the rights guaranteed under the Constitution of India and consequently declare the same as null and void and further restrain the respondents from proceeding further except in accordance with law and to pass such other orders as this Hon'ble Court deems fit and proper.

Counsel for the Petitioner: MR.L.VENKATESHWAR RAO

**Counsel for the Respondent No.1: MR.N.RANGA REDDY (SC FOR MNICIPAL
CROP. VSP.)**

The Court at the stage of admission made the following:

ORDER:

The petitioner is the lessee in respect of the premises bearing No.10-1-8/2 situated at Waltair Uplands, Visakhapatnam and has been continuing in possession of the premises as on today. The respondents 2 and 3 herein are the owners of the said building. This writ petition is filed aggrieved by the alleged action of the first respondent Municipal Corporation in seeking to demolish the said premises for the purpose of the road-widening. It appears that before initiating the impugned action the first respondent Corporation has taken consent of the respondents 2 and 3 who are the landlords. However, the contention of the petitioner in this writ petition is that since the petitioner is in occupation of the premises in question as a lessee, the first respondent Corporation is not entitled to resort to the demolition of the premises without notice to the petitioner. It is contended that the impugned action is not only in violation of the principles of natural justice but also contrary to the provisions of the Hyderabad Municipal Corporation Act, 1955 as made applicable to the Visakhapatnam Municipal Corporation.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner while relying upon the decision in *USHODAYA PUBLICATIONS, HYDERABAD v. COMMISSIONER, MCH* contended that the action of the respondents in seeking to demolish the structures in question without notice to the petitioner and without following the due process of law is arbitrary and illegal.

In the said decision, the Division Bench of this Court while considering an identical issue held as under:

“The 1st respondent is a statutory authority. Its right to take possession of the land, therefore, must be exercised within the four corners of the statute. It is one thing to say that the provisions laid down under the said Act for acquiring the land are not required to be taken recourse to as the owner thereof has granted consent but the same would not

mean that the lessee's consent need not be taken. There cannot be any doubt whatsoever that the said consent granted by the owner would not be binding upon the lessee and in that view of the matter the 1st respondent had no right to take forcible possession of the land in question, relying on the purported consent obtained by it from the petitioner's lessor without taking recourse to the provisions of the Land Acquisition Act as thereby the petitioner shall be deprived of its own valuable right."

Accordingly, the Division Bench allowed the said writ petition and issued a Writ of Mandamus directing the respondents therein to forbear from taking possession of the land in question without taking recourse to the provisions of the Hyderabad Municipal Corporation Act, 1955 or the Land Acquisition Act, 1894.

Learned Standing Counsel for the Corporation does not dispute the above legal position. Hence, I deem it appropriate to dispose of the writ petition in terms of the ratio laid down in the above case.

Accordingly, the Writ Petition is disposed of with a direction to the first respondent Corporation not to demolish the premises in question without following the procedure as contemplated under the Hyderabad Municipal Corporation Act, 1955 as is made applicable to the Visakhapatnam Municipal Corporation.

The Writ Petition is accordingly disposed of. No order as to costs.

12th April, 2005.

Lsk

To

1. The Commissioner, Visakhapatnam Municipal Corporation,
Assilemetta Junction, Visakhapatnam.

2. Two CD copies.